

House Engrossed Senate Bill

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
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CHAPTER 190

SENATE BILL 1219

AN ACT

AMENDING SECTIONS 36-557 AND 36-2959, ARIZONA REVISED STATUTES; RELATING TO
DEVELOPMENTAL DISABILITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 36-557, Arizona Revised Statutes, is amended to
3 read:

4 36-557. Purchase of community developmental disabilities
5 services; application; contracts; limitation

6 A. The department may use state and federal funds appropriated or
7 otherwise available to it for this purpose to assist in the establishment and
8 maintenance of local developmental disability services by public or private
9 nonprofit or profit agencies. The funds may be expended as professional fees
10 for service, in contracts for advancement or reimbursement or in another
11 appropriate manner and may be used for any purpose necessary to the provision
12 of local developmental disability services. They may not be used for
13 departmental salaries, care of developmentally disabled persons by the
14 department or any other purpose within the department itself, but they may be
15 used for consultation to the department in the interest of local programs.

16 B. A local public or private nonprofit or profit agency providing or
17 intending to provide community developmental disability services and desiring
18 to contract with the department for the furnishing of such services shall
19 submit a program plan and budget to the department on the forms and in the
20 manner required by the department. If the program meets departmental
21 standards and is consistent with the state plan of the department and the
22 individualized service program plan of the client, the department,
23 notwithstanding the provisions of title 41, chapter 23, relating to
24 procurement and including services pursuant to section 36-2943, may contract
25 with that agency for such services as are required and upon such terms and
26 conditions as the department shall require. The contracts shall provide that
27 the provider of services shall be subject to a continuing program evaluation
28 by the department through progress reports, expenditure reports, program
29 audits or other appropriate evaluation techniques and to assure that the
30 provider of service is in continued compliance with the terms of the contract
31 and the department's community developmental disability service standards and
32 requirements.

33 C. Contracts between the department and a school district or districts
34 shall be subject to approval by the department of education.

35 D. This article does not make the department or the state responsible
36 for funding programs beyond the limits of legislative appropriation for the
37 programs. This article does not require a provider of services to provide
38 unreimbursed services to the department or its clients.

39 E. Contracts to provide community developmental disability services
40 shall require that:

41 1. The contractor is obligated to operate a program or service in
42 strict accordance with the standards adopted for such program or service by
43 the department.

1 2. If state funding is provided for a particular program the
2 contractor, to the extent of positions available which are being purchased by
3 the department, shall provide services to a developmentally disabled client
4 who has been evaluated and placed by the department.

5 3. All contractors must carry liability insurance in amounts approved
6 by the risk management section of the department of administration and file
7 proof of such insurance with the risk management section. The director may
8 waive such requirement on a case by case basis upon a finding that insurance
9 for such program or service is not practicably available at affordable rates
10 and that it is necessary that the program or service be provided by the
11 contractor.

12 4. All clients enrolled in programs shall have all the same specified
13 rights as they would have if enrolled in a program operated directly by the
14 state.

15 5. Except for emergency placement pursuant to section 36-560,
16 subsection N, payment shall not be made based on program services provided to
17 a client if a placement evaluation has not been made, and no individual
18 program has been prepared and when, upon such placement evaluation, no
19 recommendation has been made to enroll the client in the particular program
20 service.

21 This article does not require a contracted agency to provide unreimbursed
22 services to the department or a client of the department.

23 F. Contracts for the purchase of residential care services other than
24 those community residential settings licensed pursuant to this chapter shall,
25 in addition to other general requirements applicable to purchase of care
26 contractors:

27 1. Provide for mandatory inspection by the department every two years
28 for facilities other than group homes.

29 2. Provide for mandatory monitoring by the department for health,
30 safety, contractual and programmatic standards at least every six months.

31 3. Provide for mandatory investigation by the department in response
32 to complaints within ten working days, except that in those instances which
33 pose a danger to the client, the department shall conduct the investigation
34 immediately. Health and safety complaints related to group homes shall be
35 referred to the department of health services on receipt. The department of
36 health services shall share all incident reports related to health and safety
37 with the division of developmental disabilities.

38 4. Except for group homes licensed by the department of health
39 services, specify the health and safety and sanitation codes and other codes
40 or standards applicable to the facility or to the operation of the facility
41 by the contractor other than group homes.

42 5. Provide for mandatory periodic reports to be filed by the provider
43 contractor with the department with respect to the operation of the facility.

1 6. Provide that the facility and the books and records of the facility
2 and of the provider are subject to inspection at any time by employees of the
3 department or designees of the department.

4 7. Provide that parents and guardians of developmentally disabled
5 persons residing at the facility, members of the developmental disabilities
6 advisory council, and members of other recognized and ongoing advocacy groups
7 for developmentally disabled persons may inspect the facility at reasonable
8 times.

9 G. Contracts for purchase of residential care services shall require a
10 community residential setting, as defined in section 36-551, to be licensed
11 pursuant to this chapter other than group homes licensed by the department of
12 health services.

13 H. The division shall ensure that all contracted developmental
14 disabilities service providers rendering services pursuant to this chapter
15 are reimbursed in accordance with title XIX of the social security act.

16 I. Contracts for client services issued by the department shall
17 include language outlining the provisions for a grievance and appeal
18 procedure. The director shall provide notice to providers not less than
19 thirty days prior to the issuance of an amendment to a qualified vendor
20 agreement. Beginning September 1, 2006, the decision of the director
21 regarding qualified vendor agreement amendments may be appealed pursuant to
22 title 41, chapter 6, article 10. The grievance process applicable to these
23 contracts shall comply with title XIX requirements.

24 J. As a condition of contracts with any developmental disabilities
25 service provider, the director shall require terms that conform with state
26 and federal laws, title XIX statutes and regulations and quality
27 standards. The director shall further require contract terms that ensure
28 performance by the provider of the provisions of each contract executed
29 pursuant to this article.

30 K. The division shall establish a rate structure that ensures an
31 equitable funding basis for private nonprofit or for profit agencies for
32 services pursuant to subsection B of this section and section 36-2943. In
33 each fiscal year, the division shall review and adjust the rate structure
34 based on the provisions of section 36-2959. A rate book shall be published
35 and updated by the division to announce the rate structure that shall be
36 incorporated by reference in contracts for client services.

37 L. The division shall disclose to a service provider in the individual
38 program plan defined by section 36-551, AND IN ALL MEETINGS RESULTING FROM A
39 RESPONSE TO A VENDOR CALL, any historical and behavioral information
40 necessary for the provider to be able to anticipate the client's future
41 behaviors and needs INCLUDING SUMMARY INFORMATION FROM THE PROGRAM REVIEW
42 COMMITTEE, UNUSUAL INCIDENT REPORTS REVIEWED BY THE HUMAN RIGHTS COMMITTEE
43 AND BEHAVIORAL TREATMENT PLANS. THE DIVISION SHALL REDACT THE CLIENT'S
44 IDENTIFICATION FROM THIS INFORMATION.

1 M. SERVICE PROVIDERS ARE AUTHORIZED TO ENGAGE IN THE FOLLOWING
2 ACTIVITIES IN ACCORDANCE WITH A CLIENT'S INDIVIDUAL PROGRAM PLAN:

3 1. ADMINISTER MEDICATIONS, INCLUDING ASSISTING WITH THE CLIENT'S
4 SELF-ADMINISTRATION OF MEDICATIONS.

5 2. LOG, STORE, REMOVE AND DISPOSE OF MEDICATIONS.

6 3. MAINTAIN MEDICATIONS AND PROTOCOLS FOR DIRECT CARE.

7 N. THE DEPARTMENT MAY ADOPT RULES ESTABLISHING PROCEDURES FOR ENGAGING
8 IN THE ACTIVITIES LISTED IN SUBSECTION M OF THIS SECTION.

9 O. TO PROTECT THE HEALTH AND SAFETY OF A CLIENT, A PROVIDER MUST
10 NOTIFY THE DIVISION WITHIN TWENTY-FOUR HOURS IF AN EMERGENCY SITUATION EXISTS
11 IN WHICH THE PROVIDER IS UNABLE TO MEET THE HEALTH OR SAFETY NEEDS OF THE
12 CLIENT.

13 P. ON NOTIFICATION OF AN EMERGENCY SITUATION, THE DEPARTMENT SHALL
14 HOLD AN INDIVIDUAL PROGRAM PLAN MEETING WITHIN FIFTEEN DAYS AFTER
15 NOTIFICATION TO RECOMMEND ANY CHANGES, INCLUDING WHETHER THERE IS A NEED FOR
16 TEMPORARY ADDITIONAL STAFFING TO PROVIDE APPROPRIATE CARE FOR A CLIENT, AND
17 DEVELOP A PLAN WITHIN THIRTY DAYS AFTER NOTIFICATION TO RESOLVE THE
18 SITUATION.

19 Sec. 2. Section 36-2959, Arizona Revised Statutes, is amended to read:
20 36-2959. Reimbursement rates; capitation rates; annual review

21 A. The department shall contract with an independent consulting firm
22 for an annual study of the adequacy and appropriateness of title XIX
23 reimbursement rates to service providers for the developmentally disabled
24 program of both the Arizona long-term care system and the state only program.
25 The consultant shall also include a recommendation for annual inflationary
26 costs. UNLESS MODIFIED IN RESPONSE TO FEDERAL OR STATE LAW, THE INDEPENDENT
27 CONSULTING FIRM SHALL INCLUDE, IN ITS RECOMMENDATION, COSTS ARISING FROM
28 AMENDMENTS TO EXISTING CONTRACTS. The department may require, and the
29 department's contracted providers shall provide, financial data to the
30 department in the format prescribed by the department to assist in the study.
31 A complete study of reimbursement rates shall be completed no less than once
32 every five years.

33 B. Capitation rate adjustments shall be limited to utilization of
34 existing services and inflation unless policy changes, including creation or
35 expansion of programs, have been approved by the legislature or are
36 specifically required by federal law or court mandate.

37 C. The administration shall contract with an independent consulting
38 firm for an annual study of the adequacy and appropriateness of title XIX
39 reimbursement rates to service providers for the elderly and physically
40 disabled program of the Arizona long-term care system. The administration
41 may require, and the administration's contracted providers shall provide,
42 financial data to the administration in the format prescribed by the
43 administration to assist in the study. A complete study of reimbursement
44 rates shall be completed no less than once every five years. In determining
45 the adequacy of the rates in the five year study, the consulting firm shall

1 examine in detail the costs associated with the delivery of services,
2 including programmatic, administrative and indirect costs in providing
3 services in rural and urban Arizona.

4 D. The department and the administration shall provide each of their
5 reports to the joint legislative budget committee and the administration by
6 October 1 of each year.

7 E. The department shall include the results of the study in its yearly
8 capitation rate request to the administration.

9 F. If results of the study are not completely incorporated into the
10 capitation rate, the administration shall provide a report to the joint
11 legislative budget committee within thirty days of setting the final
12 capitation rate, including reasons for differences between the rate and the
13 study.

APPROVED BY THE GOVERNOR MAY 12, 2008.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 12, 2008.